

32B-3-204 Disciplinary proceeding procedure.

- (1)
 - (a) Subject to Section 32B-3-202, the following may conduct an adjudicative proceeding to inquire into a matter necessary and proper for the administration of this title and rules adopted under this title:
 - (i) the commission;
 - (ii) a hearing examiner appointed by the commission to conduct a suspension, non-renewal, or revocation hearing required by law;
 - (iii) the director; and
 - (iv) the department.
 - (b) Except as provided in this section or Section 32B-2-605, a person described in Subsection (1)(a) shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.
 - (c) Except when otherwise provided by law, an adjudicative proceeding before the commission or a hearing examiner appointed by the commission shall be:
 - (i) video or audio recorded; and
 - (ii) subject to Subsection (3)(b), conducted in accordance with Title 52, Chapter 4, Open and Public Meetings Act.
 - (d) A person listed in Subsection (1)(a) shall conduct an adjudicative proceeding concerning departmental personnel in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.
 - (e) A hearing that is informational, fact gathering, and nonadversarial in nature shall be conducted in accordance with rules, policies, and procedures made by the commission, director, or department.
- (2)
 - (a) Subject to Section 32B-3-202, a disciplinary proceeding shall be conducted under the authority of the commission, which is responsible for rendering a final decision and order on a disciplinary matter.
 - (b)
 - (i) The commission may appoint a necessary officer, including a hearing examiner, from within or without the department, to administer the disciplinary proceeding process.
 - (ii) A hearing examiner appointed by the commission:
 - (A) may conduct a disciplinary proceeding hearing on behalf of the commission; and
 - (B) shall submit to the commission a report including:
 - (I) findings of fact determined on the basis of a preponderance of the evidence presented at the hearing;
 - (II) conclusions of law; and
 - (III) recommendations.
 - (iii) A report of a hearing examiner under this Subsection (2)(b) may not recommend a penalty more severe than that initially sought by the department in the notice of agency action.
 - (iv) A copy of a hearing examiner report under this Subsection (2)(b) shall be served upon the respective parties.
 - (v) Before final commission action, the commission shall give a respondent and the department reasonable opportunity to file a written objection to a hearing examiner report.
- (3)
 - (a) The commission or an appointed hearing examiner shall preside over a disciplinary proceeding hearing.

- (b) A disciplinary proceeding hearing may be closed only after the commission or hearing examiner makes a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order.
 - (c)
 - (i) The commission or its hearing examiner as part of a disciplinary proceeding hearing may:
 - (A) administer an oath or affirmation;
 - (B) take evidence;
 - (C) take a deposition within or without this state; and
 - (D) require by subpoena from a place within this state:
 - (I) the testimony of a person at a hearing; and
 - (II) the production of a record or other evidence considered relevant to the inquiry.
 - (ii) A person subpoenaed in accordance with this Subsection (3)(c) shall testify and produce a record or tangible thing as required in the subpoena.
 - (iii) A witness subpoenaed, called to testify, or called to produce evidence who claims a privilege against self-incrimination may not be compelled to testify, but the commission or the hearing examiner shall file a written report with the county attorney or district attorney in the jurisdiction where the privilege is claimed or where the witness resides setting forth the circumstance of the claimed privilege.
 - (iv)
 - (A) A person is not excused from obeying a subpoena without just cause.
 - (B) A district court within the judicial district in which a person alleged to be guilty of willful contempt of court or refusal to obey a subpoena is found or resides, upon application by the party issuing the subpoena, may issue an order requiring the person to:
 - (I) appear before the issuing party; and
 - (II)
 - (Aa) produce documentary evidence if so ordered; or
 - (Bb) give evidence regarding the matter in question.
 - (C) Failure to obey an order of the court may be punished by the court as contempt.
 - (d) In a case heard by the commission, the commission shall issue its final decision and order in accordance with Subsection (2).
- (4)
 - (a) The commission shall:
 - (i) render a final decision and order on a disciplinary action; and
 - (ii) cause its final order to be prepared in writing, issued, and served on all parties.
 - (b) An order of the commission is final on the date the order is issued.
 - (c) The commission, after the commission renders its final decision and order, may require the director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.
- (5)
 - (a) If a respondent requests a disciplinary proceeding hearing, the hearing held by the commission or a hearing examiner appointed by the commission shall proceed formally in accordance with Sections 63G-4-204 through 63G-4-209 if:
 - (i) the alleged violation poses, or potentially poses, a grave risk to public safety, health, and welfare;
 - (ii) the alleged violation involves:
 - (A) selling or furnishing an alcoholic product to a minor;
 - (B) attire, conduct, or entertainment prohibited by Chapter 1, Part 5, Attire, Conduct, and Entertainment Act;

- (C) fraud, deceit, willful concealment, or misrepresentation of the facts by or on behalf of the respondent;
 - (D) interfering or refusing to cooperate with:
 - (I) an authorized official of the department or the state in the discharge of the official's duties in relation to the enforcement of this title; or
 - (II) a peace officer in the discharge of the peace officer's duties in relation to the enforcement of this title;
 - (E) an unlawful trade practice under Chapter 4, Part 7, Trade Practices Act;
 - (F) unlawful importation of an alcoholic product; or
 - (G) unlawful supply of liquor by a liquor industry member, as defined in Section 32B-4-702, to a person other than the department or a military installation, except to the extent permitted by this title; or
 - (iii) the department determines to seek in a disciplinary proceeding hearing:
 - (A) an administrative fine exceeding \$3,000;
 - (B) a suspension of a license, permit, or certificate of approval of more than 10 days; or
 - (C) a revocation of a license, permit, or certificate of approval.
 - (b) If a respondent does not request a disciplinary proceeding hearing, a hearing shall proceed informally unless it is designated as a formal proceeding pursuant to rules adopted by the commission in accordance with Subsection (5)(c).
 - (c) The commission shall make rules to provide a procedure to implement this Subsection (5).
- (6)
- (a) If the department recommends nonrenewal of a license, the department shall notify the licensee of the recommendation at least 15 days before the commission takes action on the nonrenewal.
 - (b) Notwithstanding Subsection (2), the commission shall appoint a hearing examiner to conduct an adjudicative hearing in accordance with this section if the licensee files a request for a hearing within 10 days of receipt of the notice under Subsection (6)(a).

Amended by Chapter 365, 2012 General Session